

## **NOTICE OF PROPOSED RULEMAKING ACTION**

### **CALIFORNIA SCHOOL FINANCE AUTHORITY**

#### **Article 1.6, Sections 10170.16 through 10170.24**

#### **Title 4, Division 15**

#### **California Code of Regulations**

NOTICE IS HEREBY GIVEN that the California School Finance Authority (CSFA), organized and operating pursuant to Sections 17170 through 17199.5 of the Education Code, proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action. Any person interested may present written statements or arguments relevant to the proposed action to the attention of the Contact Person as listed in this Notice no later than 5:00 p.m. on Monday, November 24, 2014. The CSFA Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person(s) designated in this notice as Contact Person and will be mailed to those persons who submit statements related to this proposal or who have requested notification of any changes to the proposal.

#### **Proposed Regulatory Action**

CSFA proposes to adopt Sections 10170.16 through 10170.24 of Title 4 of the California Code of Regulations (Regulations) as permanent regulations. The Regulations implement CSFA's responsibilities related to the Charter School Revolving Loan Fund Program (Program).

#### **Authority and Reference**

Authority: Section 41365 of the Education Code. Section 41365(h) allows CSFA to adopt regulations in order to administer the Program.

Reference: Section 41365 of the Education Code, Section 41366.5 of the Education Code, and 47600 et seq. and 47605 of the Education Code. The Regulations include a number of the requirements of the Program contained in Section 41365.

#### **Informative Digest/Policy Statement Overview**

CSFA was created in 1985 to assist school districts and community college districts in financing school construction projects (Education Code section 17170, et seq.). CSFA is authorized to adopt bylaws for the regulation and conduct of its business, and is vested with all powers reasonably necessary to carry out its powers and responsibilities (Education Code sections 17179 and 17180).

Pursuant to Education Code, Section 41365, the State Legislature directed the California School Finance Authority (Authority) to commence administration of the Charter School Facility Grant Program (Program) with the 2013-14 fiscal year and to adopt regulations to implement the statute. Effective July 1, 2013, the Authority initiated its administration of the Program, and pursuant to Section 41365(h), the Authority adopted emergency regulations through the Office of Administrative Law's (OAL's) Emergency Rulemaking procedures, and such emergency regulations were approved by OAL on February 3, 2014 (OAL Regulatory Action # 2014-0123-02 E). In addition, OAL approved an emergency readopt of the emergency regulations pursuant to Government Code, Section 11346.1(h), on August 4, 2014 (OAL Regulatory Action # 2014-0723-03 EE). In order to establish permanent regulations for purposes of administration of the Program, the Authority is proposing permanent regulations through OAL's permanent rulemaking process and through submission of a Certificate of Compliance.

The proposed regulations set forth CSFA's policies and procedures for administering the Program, including : Program purpose; definitions, eligibility requirements; application content and submission requirements; application review and evaluation/underwriting criteria; loan amount and repayment terms; loan agreements; internal controls, audits, and conflicts of interest; and funding contingency.

In order to be eligible for Program loans, Applicants are required to meet minimum eligibility requirements, which include, but are not limited to, the following: (1) Applications are submitted by a Charter School, or on behalf of a Charter School by a Chartering Authority; (2) a current charter has been awarded and is in place at the time of the application submission, or in the case of a first year charter, a charter petition has been submitted for approval to the Chartering Authority; (3) if the Charter School is applying on its own behalf, the Charter School is an incorporated entity; (4) the Charter School is not a conversion from an existing public school; (5) the Charter School has not had its charter renewed at the time of application submission; (6) the Charter School is in compliance with all other programs administered by the Authority, if applicable; and (7) the Charter School is in good standing with its Chartering Authority and in compliance with the terms of its charter.

Pursuant to Education Code, Section 41365(c), the Program provides loans to Charter Schools of up to \$250,000 in-total during the lifetime of the Charter School in order the meet the purposes of the charter granted pursuant to Education Code, Section 47605.

The Program provides financial benefits to new charter schools by assisting such schools in meeting their short-term cash flow needs when State revenues based on student attendance are not sufficient to cover the operating expenses. Also refer to "Results of Economic Impact Assessment" (item d), below.

The Authority has conducted an evaluation as to whether there are any related regulations on this matter and has found that these are the only regulations dealing with this type of loan program. Therefore, the proposed regulations do not present any inconsistencies or incompatibilities with existing state regulations.

The Regulations are briefly summarized below. Refer to the Initial Statement of Reasons for additional detail.

**Sections 10170.16 – “Purpose”:**

This section establishes the administration of the Program by CSFA.

**Section 10170.17 – “Definitions”:**

This section provides definitions for key terms. This section also incorporates by reference the Charter School Revolving Loan Fund Program Application form (CSFA 14-01; dated January 8, 2014), which is herein incorporated by reference.

**Section 10170.18 – “Eligible Applicant”:**

This section sets forth the minimum requirements for an Applicant to be considered eligible under the Program.

**Section 10170.19 – “Application Content and Submission”:**

This section sets forth the application submission requirements, parameters, and criteria, including, but not limited to the following: when Applications will be available, when Applications are due, how to submit an Application, and what specific documents will need to be submitted with the Application.

**Section 10170.20 – “Application Review and Evaluation/Underwriting Criteria”:**

This section sets forth specific evaluation criteria that the Authority is required to use as a part of its determination for a loan award. These criteria include, but are not limited to, the following: (1) that the charter school meets the minimum eligibility criteria under Section 10170.18; (2) the Applicant demonstrates the ability to repay the loan; and (3) the Applicant demonstrates that the use of loan funds will be strictly for charter school operations and financing consistent with Education Code, Section 47605 et seq. This section also sets forth additional optional criteria that the Authority may use in making a Program loan determination. In addition, this section provides for giving priority to new charter schools within designated regions within the State, as well as priority based on eligibility for “free and reduce-priced meals” in the attendance area in which the school is located, in the event the Program is oversubscribed.

**Section 10170.21 – “Loan Amount and Repayment Terms”:**

This section sets forth the terms for repayment of Program loans, including the interest rate, the term of the loan, the maximum loan amount, and the repayment period.

**Section 10170.22: “Loan Agreements”**

This section sets forth the parameters relating to the Loan Agreement, including, but not limited to: the stipulation that each Loan Recipient must agree to the terms and conditions of the Loan

Agreement prior to release of funds; the requirement that each Loan Recipient have a valid CDS code; the actual terms and conditions to which each Loan Recipient is to agree; the requirement that the Loan Agreement include an offset and repayment schedule; and the specific steps the Authority will take in the event a charter school has insufficient funds to make its annual payment, or a charter school fails to open within the next fiscal year after receiving a loan disbursement. In addition, this section also sets forth the steps that the Authority will take in the event a charter school operated by an educational management organization, charter management organization or chartering authority is unable to pay the loan.

#### **Section 10170.23: “Internal Controls, Audits and Conflicts of Interest”**

This section provides that the Authority may conduct periodic audits to ensure that Program funds are being used in accordance with the Program’s purpose, Loan Recipients retain sufficient documentation to substantiate their use of Program funds, the Authority may require Loan Recipients to verify their continued eligibility, and the Authority retains the right to conduct site visits, when deemed necessary.

#### **Section 10170.24: “Funding Contingency”**

This section sets forth that the funding for the Program is contingent upon the availability of funds in the Charter School Revolving Loan Fund.

#### **Other Matters Prescribed by Statutes Applicable To the Specific State Agency or to any Specific Regulation or Class of Regulations**

No other matters prescribed by statute are applicable to CSFA or to any specific Regulation or class of Regulations pursuant to Section 11346.5(a)(4) of the California Government Code pertaining to the proposed Regulations or CSFA.

#### **Mandate on Local Agencies or School Districts**

CSFA has determined that the Regulations do not impose a mandate on local agencies or school districts.

#### **Fiscal Impact**

CSFA has determined that the Regulations do not impose any additional cost or savings to any state agency, any costs to any local agency or school district requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other non-discretionary cost or savings to any local agency, or any cost or savings in federal funding to the State.

CSFA expects to incur additional expenses in implementing and administering the Program, including expenses associated with two additional full-time staff positions, a consulting contract, and non-staffing administrative expenses totaling approximately \$279,000 per year.

Pursuant to Education Code, Section 41366.6(a), the California School Finance Authority shall ensure that adequate funds are available in the Charter School Revolving Loan Funds to provide Program awards, and to facilitate the transfer of funds from the Charter School Security Fund to the Charter School Revolving Loan Fund, as necessary.

For the current 2013-14 fiscal year, approximately \$10.25 million was available in the Charter School Revolving Loan Fund to provide Program loans. There will be no cost or savings to any State Agency pursuant to Government Code Sections 11346.1(b) or 11346.5(a)(6).

### **Initial Determination Regarding any Significant, Statewide Adverse Economic Impact Directly Affecting Business**

CSFA has made an initial determination that the Regulations will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### **Effect on Small Businesses**

CSFA has determined that the adoption of the Regulations will not affect small business. The Program is a voluntary loan program available to new charter schools to assist in start-up costs.

### **Cost Impacts**

The CSFA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Cost Impact on Housing**

The Regulations will not have any effect on housing costs.

### **Results of Economic Impact Assessment**

- a. With the exception of the addition of a limited number of full-time positions to administer the Program, the proposed regulations will unlikely have an impact on the creation or elimination of jobs within the State of California. In addition, the Authority is unaware of any reason providing loan funds to awardees would result in the elimination of jobs. The purpose of the proposed regulations is to set forth administrative criteria and requirements for administering a loan program for newly established charter schools across the State of California. There are no provisions within the proposed regulations which place additional burdens, obligations, or

- expenses on existing businesses such that jobs would be created or eliminated as a result.
- b. The proposed regulations will unlikely have an impact on the creation or elimination of new businesses within the State of California. As noted above, the purpose of the proposed regulations is to set forth administrative criteria and requirements for administering a loan program for newly established charter schools across the State of California. There are no provisions within the proposed regulations which place additional burdens, obligations, or expenses on existing businesses such that businesses would be created or eliminated as a result.
  - c. The proposed regulations will unlikely have an impact on the expansion of businesses currently doing business within the State of California. The purpose of the proposed regulations is to set forth administrative criteria and requirements for administering a loan program for newly established charter schools across the State of California.
  - d. The proposed regulations are intended to set forth administrative criteria and requirements for administering a loan program for newly established charter schools across the State of California. In the event the Program is oversubscribed, priority will be given to new charter schools within designated regions within the State, as well as based on eligibility for “free and reduce-priced meals” in the attendance area in which the school is located. As such, to the extent the Program is oversubscribed, the Program and its proposed regulations have the potential to directly benefit economically vulnerable populations and communities throughout the State.

### **Reasonable Alternatives**

In accordance with Government Code Section 11346.5(a)(13), CSFA must determine that no reasonable alternative to the Regulations considered by CSFA or that has otherwise been identified and brought to the attention of CSFA would be more effective in carrying out the purpose for which the Regulations are proposed or would be as effective and less burdensome to affected private persons than the Regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CSFA invites interested persons to present statements with respect to alternatives to the Regulations during the written comment period.

### **Agency Contact Person(s)**

Written comments, inquiries, and any questions regarding the substance of the Regulations shall be submitted or directed to:

Katrina Johantgen, Executive Director  
California School Finance Authority

at:

304 South Broadway, Suite 550  
Los Angeles, CA 90013-1224  
(213) 620-4467

or

915 Capitol Mall, Room 101  
Sacramento, CA 95814  
(916) 651-7710

or

[kjohantgen@treasurer.ca.gov](mailto:kjohantgen@treasurer.ca.gov)

or

[csfa@treasurer.ca.gov](mailto:csfa@treasurer.ca.gov)

The following person is designated as a backup Contact Person for inquiries only regarding the Regulations:

Mark Paxson, General Counsel  
State Treasurer's Office  
915 Capitol Mall, Room 110  
Sacramento, CA 95814  
(916) 653-2995

#### **Written Comment Period**

Any interested person, or his or her authorized representative, may submit written comments relevant to the Regulations to CSFA. The written comment period on the Regulations will end at 5:00 p.m. on Monday, November 24, 2014. All comments to be considered by CSFA must be submitted in writing to the Agency Contact Person identified in this Notice by that time. In the event that changes are made to the Regulations during the written comment period, CSFA will also accept additional written comments limited to any changed or modified Regulations for 15 calendar days after the date on which such Regulations, as changed or modified are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

### **Availability of Initial Statement of Reasons, Rulemaking File and Express Terms of Proposed Regulations**

CSFA has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at CSFA's office at 915 Capitol Mall, Sacramento, California, during normal business hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the Regulations. Copies of these items are available upon request, from the Agency Contact Person designated in this Notice. The Sacramento address will also be the location for inspection of the rulemaking file and any other public records, including reports, documentation and other materials related to this proposed regulatory action. In addition, the rulemaking file, including the Initial Statement of Reasons and the proposed text, may be viewed on CSFA's Web site at [www.treasurer.ca.gov/csfa](http://www.treasurer.ca.gov/csfa).

### **Public Hearing**

No public hearing regarding the Regulations has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to CSFA at least 15 days before the end of the written comment period. Such request should be addressed to the Agency Contact Person identified in this Notice and should specify the Regulations for which the hearing is being requested.

### **15-Day Availability of Changed or Modified Text**

After the written comment period ends and following a public hearing, if any is requested, CSFA may adopt the Regulations substantially as described in this Notice, without further notice. If CSFA makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public (including through CSFA's Web site described above) for at least fifteen (15) calendar days before CSFA adopts the proposed Regulations, as modified. Inquiries about and requests for written copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice.

### **Availability of Final Statement of Reasons**

CSFA is required to prepare a Final Statement of Reasons pursuant to Government Code Section 11346.9. Once CSFA has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy and will be available on CSFA's Web site described above. Written requests for copies should be addressed to the Agency Contact Person identified in this Notice.